

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

WILBUR LANN PITTMAN,  
CDCR #F-64353,

Plaintiff,

vs.

FRAKLIN BROWN, Judge;  
DAVID J. DANALSEN, Judge;  
WILLIAM H. KENNDY, Judge,  
DAVID S., Judge,

Defendants.

Civil No. 09-0316 WQH (JMA)

**ORDER DISMISSING CIVIL  
ACTION WITHOUT PREJUDICE  
FOR FAILING TO PAY  
FILING FEE REQUIRED  
BY 28 U.S.C. § 1914(a) AND/OR  
FAILING TO MOVE TO PROCEED  
IN FORMA PAUPERIS  
PURSUANT TO  
28 U.S.C. § 1915(a)**

Plaintiff, an inmate currently incarcerated at the California Rehabilitation Center in Norco, California and proceeding pro se, has filed a civil rights Complaint pursuant to 42 U.S.C. § 1983. Plaintiff seeks incomprehensible injunctive relief as well as trillions of dollars in general and punitive damages against several San Diego Superior Court Judges. Plaintiff's three-page Complaint contains absolutely no factual allegations and asserts no violations of constitutional law.

**I. Failure to Pay Filing Fee or Request IFP Status**

All parties instituting any civil action, suit or proceeding in any district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay this filing fee only

1 if the party is granted leave to proceed *in forma pauperis* (“IFP”) pursuant to 28 U.S.C.  
 2 § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*,  
 3 169 F.3d 1176, 1177 (9th Cir. 1999). Here, Plaintiff has not prepaid the \$350 filing fee required  
 4 to commence a civil action, nor has he submitted a Motion to Proceed IFP. Therefore, the case  
 5 must be dismissed pursuant to 28 U.S.C. § 1914(a). *Id.*

## 6 **II. Conclusion and Order**


7 For the reasons set forth above, the Court hereby:

8 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the \$350  
 9 filing fee or file a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a); and

10 (2) **GRANTS** Plaintiff **forty five (45)** days leave from the date this Order is filed to:  
 11 (a) prepay the entire \$350 civil filing fee in full; *or* (b) complete and file a Motion to Proceed  
 12 IFP which includes a certified copy of his trust account statement for the 6-month period  
 13 preceding the filing of his Complaint. *See* 28 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2(b).<sup>1</sup>

14 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff with this  
 15 Court’s approved form “Motion and Declaration in Support of Motion to Proceed *In Forma*  
 16 *Pauperis*.” If Plaintiff fails to either prepay the \$350 civil filing fee or complete and submit the  
 17 enclosed Motion to Proceed IFP within that time, this action shall remain dismissed without  
 18 prejudice and without further Order of the Court.

19 DATED: April 3, 2009

20   
 21 **WILLIAM Q. HAYES**  
 22 United States District Judge

23  
 24 <sup>1</sup> Plaintiff is cautioned that if he chooses to proceed further with this action either by paying the  
 25 full civil filing fee required by 28 U.S.C. § 1914(a), or moving to proceed IFP, his patently insubstantial  
 26 Complaint will be subject to the mandatory screening and sua sponte dismissal provisions of 28 U.S.C.  
 27 § 1915A(b) and 28 U.S.C. § 1915(e)(2)(b). *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000)  
 28 (en banc) (noting that 28 U.S.C. § 1915(e) “not only permits but requires” the court to sua sponte  
 dismiss an *in forma pauperis* complaint that fails to state a claim); *see also Resnick v. Hayes*, 213 F.3d  
 443, 446 (9th Cir. 2000) (discussing sua sponte screening required by 28 U.S.C. § 1915A(b)). Moreover,  
 such a dismissal may be counted as a “strike” against Plaintiff if he requests IFP status in any future  
 civil action filed while he is incarcerated. *See Andrews*, 493 F.3d at 1052 (under the Prison Litigation  
 Reform Act, “[p]risoners who have repeatedly brought unsuccessful suits may entirely be barred from  
 IFP status under the three strikes rule[.]”).